

1 James G. Snell (Bar No. 173070)
jsnell@perkinscoie.com
2 PERKINS COIE LLP
3150 Porter Drive
3 Palo Alto, California 94304-1212
Telephone: (650) 838.4300
4 Facsimile: (650) 838.4350

5 Nicola C. Menaldo, *pro hac vice pending*
nmenaldo@perkinscoie.com
6 PERKINS COIE LLP
1201 Third Avenue, Suite 4900
7 Seattle, WA 98101-3099
Telephone: (206) 359-8000
8 Facsimile: (206) 359-9000

9 Attorneys for Defendant
Uber Technologies, Inc.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

14 ASFIKE KOLLOUKIAN, on behalf of
herself and those similarly situated,

15 Plaintiff,

16 v.

17 UBER TECHNOLOGIES, INC.,

18 Defendant.

Case No. CV 15-2856-PSG-JEM

**DEFENDANT'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF MOTION TO DISMISS
PLAINTIFF'S COMPLAINT AND
TO STRIKE CLASS
ALLEGATIONS**

Date: August 31, 2015
Time: 1:30 p.m.
Courtroom: 880
Judge: Hon. Philip S. Gutierrez

22 **I. REQUEST FOR JUDICIAL NOTICE**

23 Defendant Uber Technologies, Inc. ("Uber") hereby respectfully requests that
24 the Court take judicial notice of documents attached as Exhibits A-G to the
25 Declaration of James G. Snell in Support of Defendant's Request for Judicial
26 Notice ("Snell Decl."). This request is made in connection with Defendant's
27 Motion to Dismiss Plaintiff's Complaint and to Strike Class Allegations.

1 The standard for judicial notice is set forth in Rule 201 of the Federal Rules
 2 of Evidence, which allows a court to take judicial notice of an adjudicative fact not
 3 subject to “reasonable dispute,” either because it is “generally known within the
 4 territorial jurisdiction of the trial court” or it is “capable of accurate and ready
 5 determination by resort to sources whose accuracy cannot reasonably be
 6 questioned.” Fed. R. Evid. 201; *see also Lee v. City of Los Angeles*, 250 F.3d 668,
 7 688 (9th Cir. 2001) (a district court may take judicial notice of “matters of public
 8 record,” but not facts that may be “subject to reasonable dispute”). A court “must
 9 take judicial notice if a party requests it and the court is supplied with the necessary
 10 information.” Fed. R. Evid. 201(c)(1). “As a general matter, websites and their
 11 contents may be proper subjects for judicial notice.” *Caldwell v. Caldwell*, No. C
 12 05-4166 PJH, 2006 WL 618511, at *4 (N.D. Cal. Mar. 13, 2006) *order clarified*,
 13 No. C 05-4166 PJH, 2006 WL 734405 (N.D. Cal. Mar. 20, 2006) (citing *Wible v.*
 14 *Aetna Life Ins. Co.*, 375 F.Supp.2d 956, 965 (C.D.Cal.2005)).

15 In addition, on a motion to dismiss, a court may consider evidence
 16 incorporated by reference in a complaint if, “(1) the complaint refers to the
 17 document; (2) the document is central to plaintiff’s claim; and (3) no party
 18 questions the authenticity of the document.” *Marder v. Lopez*, 450 F.3d 445, 448
 19 (9th Cir. 2006). The Ninth Circuit takes an “expansive view” of the incorporation
 20 by reference doctrine, recognizing that “[e]ven if a document is not attached to a
 21 complaint, it may be incorporated by reference into a complaint if the plaintiff
 22 refers extensively to the document or the document forms the basis of the plaintiff’s
 23 claim.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). The purpose of
 24 this expansive approach is to prevent plaintiffs from surviving a motion to dismiss
 25 “by deliberately omitting . . . documents upon which their claims are based.”
 26 *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (internal quotation marks
 27 and citation omitted).

1 Uber requests that this Court take judicial notice of the following:

2 (1) The phone number underlying Plaintiff's complaint is 818-389-
3 3862. *See* Snell Decl. at Ex. A.

4 Plaintiff's complaint refers to "Plaintiff's cellular phone line," Compl. ¶1,
5 and text messages to this phone line form the basis of Plaintiff's Complaint. On
6 June 5, 2015, Plaintiff's counsel represented by email that the above phone number
7 is "the phone number at issue" in this litigation. Snell Decl. ¶ 2. Plaintiff cannot
8 reasonably question the authenticity of the email her counsel sent representing that
9 the phone number above is the phone number to which her Complaint refers.
10 Accordingly, the Court may take judicial notice of the phone number and the fact
11 that it underlies Plaintiff's allegations. *Cf. Global Acquisitions Network v. Bank of*
12 *Am. Corp.*, No. CV 12-08758 DDP CWX, 2013 WL 604159, at *8 (C.D. Cal.
13 Feb. 19, 2013) (taking judicial notice that a phone number belonged to defendant).

14 (2) Screenshots from two publicly available websites that associate
15 both the phone number at issue and [REDACTED], Burbank,
16 CA [REDACTED] with an individual named Nazo Koulloukian. *See* Snell
17 Decl. at Exs. B & C.

18 Plaintiff's complaint relies on an inference that the phone number at issue
19 belongs to or is associated with Plaintiff. However, it is "capable of accurate and
20 ready determination by resort to sources whose accuracy cannot reasonably be
21 questioned," that, *to this date*, two publicly available websites associate the above
22 phone number not with Plaintiff but with Plaintiff's counsel Nazo Koulloukian.
23 Fed. R. Evid. 201. These websites also associate Nazo Koulloukian with the
24 property address Plaintiff owns. Defendant seeks judicial notice of the fact that the
25 referenced websites exist and contain information associating Nazo Koulloukian
26 with the phone number and address of Plaintiff. *Wible v. Aetna Life Ins. Co.*, 375
27 F.Supp.2d 956, 965 (C.D.Cal. 2005) (taking judicial notice of websites, including

two Amazon websites). The fact that these websites contain this information is not subject to reasonable dispute. *Lee*, 250 F.3d at 689.

(3) Screenshots from the publicly available website for the Joseph Farzam Law Firm, which describes (a) Nazo Koulloukian as an attorney practicing at the firm and (b) Andre E Jardini as co-counsel at the firm. *See* Snell Decl. at Ex. D.

The fact that the referenced website lists Nazo Koulloukian and Andre Jardini as attorneys practicing at the law firm representing Plaintiff is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201; *Cf. Knievel*, 393 F.3d at 1076. Plaintiff cannot reasonably dispute this fact. *See Lee*, 250 F.3d at 689.

(4) Screenshots from the publicly available website for the California State Bar, which describes Nazo Koulloukian as an attorney practicing at the Joseph Farzam Law Firm. *See* Snell Decl. at Ex. E.

The fact that the referenced website lists Nazo Koulloukian as an attorney practicing at the law firm representing Plaintiff is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201; *Cf. Knievel*, 393 F.3d at 1076. Plaintiff cannot reasonably dispute this fact. *See Lee*, 250 F.3d at 689.

(5) Screenshots from a publicly available website that lists Plaintiff’s address as belonging to Leon Koulloukian and Asfike Koulloukian. *See* Snell Decl. at Ex. F.

The fact that the referenced website associates the above address with Plaintiff is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201; *Cf. Knievel*, 393

1 F.3d at 1076. Plaintiff cannot reasonably dispute this fact. *See Lee*, 250 F.3d
2 at 689.

3 (6) The Trust Transfer Deed describing a transfer of property at the
4 subject address from Leon and Asfike Koulloukian to the
5 Revocable Trust of Leon and Asfike Koulloukian. *See Snell Decl.*
6 at Ex. G.

7 It is a “matter of public record” that Plaintiff and Leon Koulloukian
8 transferred property at the subject address to a trust belonging to themselves. *Lee*,
9 250 F.3d at 689. Plaintiff cannot reasonably dispute this fact. *Id.*

10 For the foregoing reasons, Exhibits A-G may be properly considered by the
11 Court in ruling on Defendant’s Motion to Dismiss Plaintiff’s Complaint and to
12 Strike Class Allegations. Should the Court decline to take Judicial Notice of one or
13 more of the Exhibits A-G, Defendant respectfully requests that the Court
14 nonetheless consider such evidence in ruling on Defendant’s motion to dismiss
15 pursuant to Fed. R. Civ. P. 12(b)(1). *See Safe Air for Everyone*, 373 F.3d 1035,
16 1039 (9th Cir. 2004) (permitting a court to review extrinsic evidence on a factual
17 jurisdictional challenge under Rule 12(b)(1)).

18 DATED: July 10, 2015

PERKINS COIE LLP

20 By: /s/ James Snell

21 James G. Snell

Nicola C. Menaldo

22 Attorneys for Defendant
23 Uber Technologies, Inc.